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**RECLAIMING THEIR ESTATE:
AN ANALYSIS OF THE DEBATE SURROUNDING
TREATY CLAIMS AND CONSERVATION LANDS**

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ABSTRACT

Debate about Treaty claims over conservation lands has recently become a feature of the discourse surrounding the settlement and redress of Maori grievances under the Treaty of Waitangi. In this study the context of the debate is examined, from the perspectives of Maori, the Crown and the conservation and recreation lobby.

The opposition of the conservation and recreation lobby to the use of conservation lands in claim settlement is identified as the main obstacle to the settlement of such claims. These groups are seen to garner support for their position from the wider public. This support is found to originate in the environmental attitudes embodied by Pakeha society. Specifically, the perception that lands suitable for exploitation must be separated from those with value for conservation, in order that human impact on conservation values be minimised, is seen to be a factor underlying support for the conservation and recreation lobbies' thoughts on the issue.

As a means for advancing the resolution of the debate, case studies of examples of claim settlement over conservation lands in an international and New Zealand context are examined. While not being advanced as models suitable for application to all claims, these examples provide a starting point for the development of alternative approaches to claim settlement, which may have benefits for all parties involved in the debate.

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AUTHOR'S NOTE

This study began as an attempt to examine the issue of the settlement of Treaty claims over conservation land from the perspective of Maori and also of some sectors of the conservation movement. I came to this study with a sympathy for Maori grievances and an interest adding to the discourse by searching for means to provide redress for these. The difficulties presented by this topic became apparent to me soon after choosing it. As a Pakeha, the difficulty of discussing Maori views and values, without misrepresenting important aspects, is ever present. The diversity of Maori opinion in the area of grievance and claim settlement highlighted the artificial nature of discussing a 'Maori perspective' on such issues.

My original thoughts on the issue were that settlement of Treaty claims could lay Maori grievance to rest, and that claims to areas which were wrongly taken should not be overridden by conservation or recreation concerns. It has become increasingly clear to me during the study that this is problematic. Political constraints mean that only Crown land may be the subject of Treaty claims. However, the fact that these lands are also valued by many people, for many reasons, leads me to believe that it would not be politically expedient for any government to actually hand back large tracts of Crown land in the settlement of claims.

I am a supporter of the conservation movement and enjoy recreating on the conservation estate. For this reason I feel a tension within myself between the perception that we need to protect areas of wilderness for the future, and the need to provide justice to Maori. I suspect that this tension exists for many people who have thought about the issue. I tended to see the conservationist position as selfish, given that this group now has more power with regard to conservation land, than Maori. However my difficulty in presenting the two sides of the debate has been between arguing against one view, or on the other hand 'fence-sitting'. I realise that many of the views represented in the media are those of the extreme opinion in the debate. I hope I have provided a sympathetic overview of both positions and have highlighted ways forward, rather than differences.

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CHAPTER ONE

INTRODUCTION

Popular perceptions of New Zealand as a racially harmonious society have recently been challenged by the growing Pakeha awareness of the injustices perpetrated against Maori in the past. Land confiscations, unfair land purchases and other breaches of the Treaty of Waitangi (Tiriti O Waitangi)¹ have been brought to the public attention by Maori activism of the 1970s, creating a Pakeha 'remembrance' of the Treaty which Maori never forgot (Orange, 1987). The effect of these past injustices continues into the present day and is felt by Maori through their generally disadvantaged position in society.

Paralleling this public awareness has been the official recognition of the obligations of the Crown under the Treaty. The third Labour Government, in 1975, responded to the call to honour the Treaty by passing legislation setting up the Waitangi Tribunal. Since that time a number of major claims have been dealt with by the Tribunal², most of which are yet to be settled by the government³. The number of claims registered with the Tribunal has increased markedly in recent years. In 1993 there were over 400 claims waiting to be heard by the Tribunal, with 22 claims proceeding (Department of Justice, 1993).

The Waitangi Tribunal may only make recommendations on claims in respect of Crown-owned lands and resources. The Tribunal may not recommend that the Crown acquire private land to return to Maori. However, much of the land on which iwi traditionally lived and which may be the subject of past grievances or injustices is now in private ownership. Clearly, many Maori land grievances cannot be resolved by the direct return of traditional lands or lands relating to

¹ See Orange, 1987 for an overview of the events surrounding the signing of the Treaty of Waitangi.

² See Oliver, 1991 for a summary of reports on major claims until 1991. Claims reported after 1991 include the Fisheries Settlement Report (Wai 307), Mohaka River Report (Wai 119) and Te Roroa Report (Wai 38).

³ In 1988, of 59 recommendations given by the Tribunal, 21 had been fully or partially implemented (Parliamentary Commissioner for the Environment, 1988).

specific claims, if these areas are no longer in Crown ownership. Thus, other types of settlement or compensation must be found. At present, all Crown land and land transferred by the Crown to state-owned enterprises (SOEs) may be subject to claim by iwi through the Tribunal⁴.

Much of the remaining Crown-owned land is protected to preserve its high natural and conservation values. A large proportion of this land is managed for conservation purposes by the Department of Conservation (DOC). DOC's role is to protect the natural, historical and cultural values of the areas it manages. The Department attempts to protect and conserve these values by achieving a balance between the protection and sustainable use of conservation lands (DOC, 1993:8). Additionally, much high country land is Crown-owned and is administered through Crown Pastoral Leases in order to protect the areas' associated ecological values from over-intensive use in pastoral production.

Much of the land in these protected areas is of historical and spiritual significance to local iwi. In the South Island, for instance, a substantial portion of Ngai Tahu's traditional rohe (tribal territory) is made up of Crown owned national parks. Many features in these national parks are of particular spiritual value to Ngai Tahu and the areas are the repository of much tribal mythology and tradition (Waitangi Tribunal, 1991:1504). Aoraki (Mount Cook), for example, is known as a central figure in Ngai Tahu creation mythology, explaining the iwi's (tribe's) presence in the South Island (Tau et al, 1990:4.34). Ngai Tahu's trails throughout their rohe, the lakes, rivers and mountains '...were all taonga, all greatly prized' (Waitangi Tribunal, 1991:829).

The combination of these factors - that Crown lands are the only lands available for claim through the Waitangi Tribunal, and that the majority of remaining Crown land is held in management for conservation purposes - has led to the assumption that portions of these lands may be offered by government in settlement of Treaty claims. This issue has become the focus of a debate begun at the time of the Waitangi Tribunal hearing of the Ngai Tahu claim. In this claim Ngai Tahu indicated that a satisfactory settlement may include reinstatement of Ngai Tahu ownership or partial control of South Island national parks. Conservation and recreation groups, particularly the Federated Mountain Clubs (FMC), opposed this approach to the settlement of the

⁴ Including land administered by Landcorp through the Crown Pastoral Lease system.

claim. FMC's opposition continued despite Ngai Tahu assurances that they would not wish to change the essential nature of National Parks, and DOC's acknowledgement that Ngai Tahu ownership would not change day-to-day management of parks (Waitangi Tribunal, 1991).

This debate has recently been extended from the Ngai Tahu case, to the general concern that conservation lands are managed for the public and should not be 'privatised' by being transferred into iwi control. Arguments against iwi ownership or management of conservation lands range from the perceived negative implications for the ecological values of such areas, to the possibility that iwi may restrict free public access for recreation purposes.

OBJECTIVES AND APPROACH OF THE STUDY

The aim of this study is to examine the debate surrounding Crown options for settling Treaty claims over land with importance to both iwi and conservation interests. In addressing this issue the study concentrates on land managed by the Department of Conservation (DOC), rather than the totality of lands assumed to be of conservation value. I acknowledge that the division between conservation and non-conservation lands is an artificial one. Whereas all lands have, to some degree, important values in terms of nature conservation, in the New Zealand context areas managed by DOC are often more highly valued for their ecology and are thought to be worthy of stronger protection than that afforded to general lands. In reality some areas managed by DOC are not of extremely high conservation value and are often sold in order that DOC may purchase other areas with higher conservation values (Mason, 1994:pers. comm.).

The debate outlined above centres around the conservation lobby and its perspective on Treaty claim settlement. In this study I will examine the issue more closely from the point of view of Maori and the Crown, as well as the conservation lobby, in an attempt to understand how the land claims process can proceed given this level of opposition.

The starting point for this study is the debate surrounding the use of conservation lands in Treaty claim settlement. The study gives an overview of the context within which options for the settlement of claims over conservation land are to be formulated and attempts to clarify the reasons behind opposition to such settlements. **Chapter two** examines the issues surrounding

the Treaty of Waitangi and the Crown's obligations to honour the guarantees made in the Treaty. The role of the Waitangi Tribunal in the claim process is discussed. Maori expectations in terms of redress through this process are examined, highlighting the importance to Maori of land as a form of redress.

Chapter three addresses the political context in which settlements over conservation lands are to be made. The positions of conservation and recreation groups, as well as the government, are outlined. The government's position on lands available for redress, and the role of the Department of Conservation in the debate, are analyzed in terms of the views of Maori and conservation and recreation groups. The level of opposition from conservation and recreation groups is identified as one of the major obstacles preventing the settlement of claims with conservation lands. Reasons behind this opposition are examined in **Chapter four**.

This chapter begins with a discussion of the growing rift between the concerns of the conservation movement and current Maori concerns. This division is analyzed in terms of dominant environmental attitudes, in contrast to Maori environmental thought. This analysis concentrates on the dominant emphasis placed upon the need for conservation lands to remain in public ownership and management, in order to best protect conservation values.

Possibilities for the reconciliation of the competing interests identified in the study are discussed in **Chapter Five**. Two overseas models for the settlement of land claims over public conservation lands are studied, along with a recent agreement in the New Zealand context. These case studies establish the viability of exploring alternative approaches to claim settlement. Such approaches would need to accommodate issues unique to the New Zealand context, some of which are identified in this chapter. Conclusions from the preceding analysis are drawn in **Chapter Six**.

CHAPTER TWO

TREATY CLAIM CONTEXT

The debate outlined in the previous chapter has arisen in the context of the growing realisation by sectors of the public and the Crown alike, of the need to make redress for breaches⁵ of the guarantees of the Treaty of Waitangi. This chapter examines the Crown's obligations under the Treaty and the process of redress through the Waitangi Tribunal. It is my intention to highlight the moral and legal basis of the need for the Crown to provide redress for Maori claims based on the Treaty. Discussion of Maori expectations arising from the claim process raises the importance of land as a form of redress.

THE TREATY OF WAITANGI

The Treaty of Waitangi has been alive in Maori thought and political action since it was signed over 150 years ago. More recently issues surrounding the Treaty and biculturalism have become a concern of many Pakeha as well. Honouring the Treaty has come to be seen as symbolic of New Zealand's movement toward a more just, bicultural society. The Treaty is now regarded by many as the fundamental constitutional document of New Zealand, giving legitimacy to government by the Crown and allowing continued Pakeha presence in the country (New Zealand Maori Council, 1983, cited in Sharp, 1990:88; Temm, 1990:95; Waitangi Tribunal, 1991:224).

The essence of the Treaty agreement between the British Crown and the Maori people gave the Crown the right to make laws in order to govern both Maori and Pakeha. By Article I Maori were to cede their sovereignty over New Zealand to the Crown. In return the Crown was to guarantee to protect the Maori people's rights to rangatiratanga⁵ over all things important to them, including their material assets, culture and social system. The Crown was granted the pre-emptive right to purchase tribal land (Article II). By Article III, Maori were to have extended to them the rights of British subjects (Kawharu, 1989). The Treaty was an acknowledgement by the British and Maori of Maori status as tangata whenua - the prior occupiers of the land. It was

⁵ The meaning of 'rangatiratanga' is discussed further below.

signed in good faith by both sides, with the intent that the Maori presence and culture should remain and be respected in the face of continuing British settlement of New Zealand (Waitangi Tribunal, 1987:148).

Differences between the Maori and English texts of the Treaty have given rise to much debate about the substance of the agreement. The Waitangi Tribunal (1991:223) takes the view that where the two versions differ considerable weight should be given to the Maori text, as that was the version consented to by most Maori. The meaning and implications of words in the Maori text have been the subject of much examination.

The concept of 'sovereignty' was conveyed in the Maori text as 'kawanatanga', a word coined by missionaries and generally used to mean 'governorship'. It has been argued that sovereignty is a sophisticated concept and kawanatanga

...covered significant differences of meaning, and was not likely to convey to Maori a precise definition of sovereignty (Orange, 1987:40).

The Crown guarantee of tribal possession of their properties was rendered in Maori as 'te tino rangatiratanga'. This phrase has a much wider meaning than the ordinary English meaning of possession and is seen to be closer in meaning to sovereignty, or self-determination, than kawanatanga (Orange, 1987:41). Debate continues as to whether the cession of sovereignty agreed to in the Treaty was absolute, or limited to some extent, by the promise to tribal chiefs of rangatiratanga (Kawharu, 1989).

In the Maori text te tino rangatiratanga was granted to Maori over 'o o ratou whenua o ratou kainga me o ratou taonga katoa' which has been translated as '...their lands, villages...and all things, tangible and intangible, of value to them' (Boast, 1989:7). The inclusion of the word 'taonga' (treasured possessions) adds the spiritual or intangible dimension to the ordinary meaning of possession and raises the question as to whether one can define boundaries or speak of 'property rights' (Montgomery, 1990:60).

Differences in meaning between the two texts have led to a focus on the underlying spirit, or principles, of the Treaty. References to the principles of the Treaty have been incorporated into a number of Acts of Parliament, for example the Environment Act 1986, Conservation Act 1987,

State-Owned Enterprises Act 1986 and Resource Management Act 1991. In enacting this legislation government agencies are required to bear in mind the Crown's obligations under the Treaty.

PRINCIPLES OF THE TREATY

The principles of the Treaty have not been definitively identified in legislation by Parliament. This reflects the opinion that the Treaty is a living document with evolving, not fixed principles (Parliamentary Commissioner for the Environment [PCE], 1988:17). Nor is there general agreement on the principles of the Treaty, although they have been interpreted and discussed by a number of organisations⁶. The Courts have taken a prominent role in interpreting the meaning of the principles. The PCE, in an overview of the various interpretations of the principles of the Treaty, recognises the emergence of three main themes: *partnership*, *tribal rangatiratanga* and *active protection*.

The principle of *partnership* implies that there is a relationship between the Crown and Maori which is to be exercised with the utmost good faith. The Crown has the freedom to govern and must meet the needs of both Maori and the wider community. The exact nature of partnership is contentious and is yet to be decided upon.

The Crown is seen to have a legal obligation to recognise *tribal rangatiratanga*. Thus Maori have the right to manage their resources and other taonga according to their own cultural preferences. Because of diversity of opinion there may be differing preferences between iwi on how resources should best be managed and what is appropriate for certain areas and people. This means the Crown must recognise and negotiate with separate iwi on an individual basis.

The Crown is obliged to *actively protect* the Maori right to rangatiratanga. The principles put forward by the Waitangi Tribunal include the idea that the right of pre-emption gives the Crown a reciprocal duty to ensure that the tangata whenua retain sufficient land to meet their future

⁶ Most significantly the Waitangi Tribunal, the Crown (Department of Justice, 1989), the Court of Appeal (*New Zealand Maori Council vs the Attorney General*, 1987), and the Royal Commission on Social Policy (1987).

needs. The Crown is also obliged to ensure Maori right to use of their lands and other taonga is protected to the fullest extent practicable. To this end the Crown is further obliged to provide some form of redress for grievances where these are established.

MAORI PRINCIPLES

There is substantial debate in the Maori world about the wisdom of identifying principles of the Treaty. Blackford and Matunga (1991:8) state that ‘...many Maori have either opposed such generalisations or reserved their positions’. However, Blackford and Matunga identify a number of ‘Maori principles’ which have been consistent themes in Maori submissions to a number of bodies, including the Waitangi Tribunal. These include:

- The principle of iwi sovereignty - The Treaty was a contractual agreement between the Crown and a Confederation of sovereign iwi nations, and was tacit recognition by the Crown of legitimate iwi sovereignty. It affirmed te tino rangatiratanga (highest authority) to iwi Maori, and ceded kawanatanga (the right to make laws) to the Crown with the proviso that te tino rangatiratanga would be retained
 - The principle of tino rangatiratanga over iwi resources - the Treaty guaranteed retention of the iwi’s right to exercise full or absolute authority over, and possession of, their natural, physical, cultural, spiritual resources and other taonga
 - The principle of explicit consent - absolute authority over, and possession of, iwi resources could only be extinguished by explicit consent of the iwi
 - The principle of active involvement - the Treaty implicitly recognised the right of the iwi to exercise their own sovereign power over their taonga. This right should not be compromised through iwi being unable to participate due to lack of information or financial resources
- (Adapted from Blackford & Matunga, 1991:8).

These principles go further than the principles developed through Pakeha institutions, in their recognition of the sovereign rights of each iwi. Each iwi is seen to have an equivalent status to the Crown, which points to the need for direct Crown to iwi negotiation on a number of issues, especially resource management issues (Blackford and Matunga, 1991:9).

LEGAL INTERPRETATION OF THE PRINCIPLES

The most significant legal discussion of the meaning of the principles of the Treaty arise from the judgement of the Court of Appeal in the case of *New Zealand Maori Council (NZMC) versus the Attorney General* (1987), over the provisions of the State Owned Enterprises (SOE) Act 1986. This Act provided for Crown assets to be transferred to the newly created SOEs. Under this Act lands transferred to SOEs which were the subject of Treaty claims made before 18 December 1986, and upheld by the Waitangi Tribunal, could be transferred back to the Crown to settle the claims. If the claim had been made after that date and the land had been sold by the SOE to a third party, the power to transfer it back to the Crown no longer existed (Temm, 1990:89). The NZMC sought a stay of the operation of this statute as they considered this section of the Act to be in conflict with section 9, which provided

Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi (SOE Act 1986, cited in Temm, 1990:89).

In this case the Court of Appeal found in favour of the New Zealand Maori Council. The transfer of Crown lands to state enterprises without consideration of Maori land grievances was seen to be inconsistent with the principles of the Treaty of Waitangi. The principles of the Treaty were seen to outweigh everything else in the State-Owned Enterprises Act (Cooke, P., 1987, cited in Temm, 1990:90).

The Court of Appeal, in this judgement, examined the principles of the Treaty in terms of the case in question. The Treaty of Waitangi was seen to be a basic constitutional document, although state sovereignty was not in question. The Treaty was considered to signify a partnership between races (Sharp, 1990:274). This partnership implies that the partners have the duty to act towards each other 'reasonably' and in 'good faith' (Cooke, P., 1987, cited in Sharp, 1990:174). The partners are seen to have wide-ranging and undefined responsibilities toward

each other. The substance of these responsibilities is to be decided through negotiation between the partners (Sharp, 1990:174). Violations of this partnership were seen by the court to give rise to the duty of reparation or redress (Sharp, 1990:274).

The Court of Appeal judgement recognises, in domestic law, the relationship between Treaty partners and the need for government to take an active role in the redress of Maori grievances. In a strict sense, these findings apply only to the matter of whether the SOE Act 1986 was subject to the terms of the Treaty (Temm, 1990:97). In a wider sense though, the Court of Appeal decision recognises the importance of the Treaty in law, while not challenging the government's right to govern (Sharp, 1990:274-275). It also points to the fact that the Courts will recognise Maori rights and Crown obligations under the Treaty (Renwick, 1990:103).

Given the legal and moral status of the principles of the Treaty, the Crown has a number of obligations to Maori. One major obligation is the provision of redress for grievances. Maori grievances against the Crown may be adjudicated in the Courts. Cases have been taken to court by Maori on the basis of legislation containing references to the Treaty of Waitangi or Maori customary rights (PCE, 1994:17). More commonly claims are taken to the Waitangi Tribunal, the major Crown mechanism for exploring Maori grievances under the Treaty and promoting redress.

WAITANGI TRIBUNAL: APPROACH AND EFFECTIVENESS

The Waitangi Tribunal was established in 1975 to investigate Maori claims based on the Treaty, from that time onward. This limited jurisdiction was extended in 1985. The Tribunal is now able to assess claims relating to acts and omissions of the Crown dating back to the signing of the Treaty of Waitangi in 1840 (Renwick, 1990:15). In effect, the Tribunal may be seen as a mediator between the Crown and iwi. It is limited by its mandate to only make recommendations, not decisions, and the fact that the Crown can decide whether and how to act on these recommendations (Blackford and Matunga, 1991:10-11).

The Waitangi Tribunal's role is to consider the practical application, meaning and effect of the principles of the Treaty (Treaty of Waitangi Act, 1975). It is accepted by the Tribunal that focusing on the principles is consistent with a Maori approach to the Treaty, which

...would imply that its *wairua* or spirit is something more than a literal construction of the actual words used can provide. The spirit of the Treaty transcends the sum total of its component written words and puts narrow or literal interpretations out of place. (Waitangi Tribunal, 1987:149).

In considering the 'practical application' of those principles, the operations of the Tribunal have revolved around the investigation of the historical circumstances surrounding claims and options for redressing grievances. Considering the extent of losses sustained by Maori, many commentators have pointed to the moderate and practical nature of recommendations made regarding the settlement of claims (Temm, 1990; Sorrenson, 1989⁷).

Recent Waitangi Tribunal findings however, have not placed a major emphasis on developing options or recommending settlements. Edward Durie⁸ (1990:23⁹) recognises that Treaty claim settlements represent a compromise - Maori cannot receive full restitution for their claims given the injury that would result to current property owners and the fact that the national economy could not provide full monetary recompense. Furthermore, the Tribunal acknowledges that it cannot recommend the substance of such a compromise and

The only compromise that any people should be asked to accept is that which comes from a negotiated agreement in which they have been fully involved (Durie, 1990¹⁰).

Recent Waitangi Tribunal investigations tend to establish the historical facts behind a grievance and only make recommendations if that is what the claimant requests. Otherwise the matter is left to be settled through direct negotiation between iwi and the Crown. For example, in the Ngai Tahu Report (Waitangi Tribunal, 1991) the Tribunal made recommendations on the

⁷ Sorrenson, M.P.K. 'Towards a radical reinterpretation of New Zealand history: the role of the Waitangi Tribunal' pp. 158-179 in Kawharu (1989).

⁸ The chief judge of the Maori Land Court and chairperson of the Waitangi Tribunal since 1981.

⁹ Durie, E. 'Maori claims: is the challenge being met?' pp. 20-25 in New Zealand Planning Council (1990).

¹⁰ *ibid*, p.23.

ownership of West Coast pounamu (greenstone) as well as issues surrounding the perpetual leases of West Coast lands and the ownership and management of Lake Ellesmere (Te Waihora) and Lake Forsyth (Wairewa). The settlement of other land and mahinga kai (food gathering places) grievances was left to be negotiated between the Crown and Ngai Tahu.

The Waitangi Tribunal may have originally been intended as a symbolic recognition of the injustices sustained by Maori during the colonisation of New Zealand (Walker, 1991:622). Nevertheless, it is now clear that it is an important and prestigious venue for the expression of issues of significance to the future of New Zealand as a nation. Although it has no real power to decide anything, Temm (1990:98) notes that the Waitangi Tribunal ‘...is becoming the conscience of the nation’. It serves as a bicultural forum for the expression of moral issues, such as the scale of past injustices and the need for redress in the present. The Waitangi Tribunal, through the claim process, elevates the status of the Treaty of Waitangi in the national consciousness and

...brings the moral force of the treaty to bear on the Government to honour its obligations, for the integrity of the Crown itself is at stake (Walker, 1991:622).

As with most issues, however, there are Maori who do not agree with this sentiment. Jackson (1992:9¹¹), for example, sees the Waitangi Tribunal as a Pakeha imposed structure which redefines Maori concepts such as rangatiratanga, in terms of Pakeha legal understanding.

Although there are conflicting opinions about the efficacy of the Waitangi Tribunal in resolving Maori grievances it remains as the main avenue through which the historical facts and current issues surrounding Maori grievances have become known to the general public and the government. The Waitangi Tribunal claim process, while not always ensuring that claims are settled to the satisfaction of both parties, remains of major importance in moving New Zealand society toward recognition of injustices of the past and the needs of Maori for reparation and redress.

¹¹ ‘The Treaty and the word: The colonization of Maori philosophy’ pp. 1-10 in Oddie & Perrett (1992).

MAORI ASPIRATIONS THROUGH THE CLAIM PROCESS

Although Maori opinion is seen to be divided over a number of issues, it is widely acknowledged in the Maori world that the Pakeha legal and governmental system has created injustice and largely ignored Maori concerns since the signing of the Treaty (Tauroa, 1989:80). The claim process represents an opportunity for the recognition of these issues and the acknowledgement of mana Maori which has been denied in the past. Importantly it also offers the opportunity for Maori to receive redress and compensation for these injustices.

Most claims to the Tribunal are centred around attempts to regain land, resources and other taonga. However, Durie (1990:23¹²) proposes that the central concern of Maori in seeking such redress is to ensure Maori cultural survival. Durie thinks that Maori are mainly concerned to sustain a '...place for being Maori in New Zealand'¹³, with the resources to enable Maori lifestyles to continue. For Williams (1990:18¹⁴) such resources include the tribal economic base (its land and fisheries); its cultural base (language, culture and history) and its social and political base. Maori cultural survival, Williams proposes, depends on the recognition of tribal rights and the ability of iwi to protect and manage their own taonga. This encompasses the right to self-determination and rangatiratanga.

The return of land is not the only focus of claim settlements. Both the Ngai Tahu and Tainui iwi, which have wide ranging claims against the Crown, are seeking settlements which constitute a number of remedies. These may include land, resources, financial compensation and other economic and political measures (Mahuta, 1990:32¹⁵; O'Regan, 1989:256¹⁶). However, land is an important aspect of Maori claims to the Tribunal in respect of regaining and sustaining both an economic and cultural base.

¹² Durie, E. 'Maori claims: is the challenge being met?' pp. 20-25 in New Zealand Planning Council (1990).

¹³ *ibid*, p. 24.

¹⁴ Williams, J. 'Back to the future: Maori survival in the 1990s' pp. 14-18 in New Zealand Planning Council (1990).

¹⁵ Mahuta, R 'Raupatu: the search for justice' pp. 28-34 in New Zealand Planning Council (1990).

¹⁶ O'Regan, T. 'The Ngai Tahu Claim' pp. 234-262 in Kawharu (1989).

Land is of central importance to Maori cultural identity and spiritual existence. The New Zealand Maori Council expresses the importance of land to Maori in the following way:

Maori land has several cultural connotations for us. It provides us with a sense of identity, belonging and continuity. It is a proof of our continued existence not only as a people, but as the tangata whenua of this country. It is proof of our link with the ancestors of our past, and with the generations yet to come. It is an assurance that we shall forever exist as people, for as long as the land shall last (NZMC Legislative Review Committee, 1980, cited in Nairn, unpub.).

Through the claim process Maori seek to regain ownership of lands of special cultural significance which were wrongly expropriated from Maori control. In traditional times land was also important in economic terms. Tribal lands provided the resources upon which the welfare of every tribal group depended (Palmer & Goodall, 1988:2). Currently land is seen as an important aspect of claim settlement which may allow tribes to participate in the current economic structure.

SUMMARY

In this chapter the Treaty of Waitangi and its relationship to Maori rights is discussed. It is concluded that Maori deserve redress for the rights that were denied them through historical disregard for the Treaty. This discussion of the Treaty and its principles points to the fact that the Crown is obliged to seek ways to provide redress for Maori grievances based on these Treaty rights. The obligation placed on the Crown has both a moral and legal basis. The Crown has arranged to consider the matters leading to Maori grievances and to seek ways to provide redress through the Waitangi Tribunal and the direct negotiation of claims with iwi. In a discussion of what would constitute appropriate redress for claims, the cultural importance of land to Maori on both a spiritual and economic level is discussed. Land is seen by Maori as an important form of redress, although it may be only one factor amongst other aspects in the settlement of a claim.

However, much of the land identified by Maori as traditionally important, which is actually available for claim through the process outlined, is now managed by the Department of Conservation to protect its conservation values. This has led to opposition to the settlement of

such claims by a number of groups. The following chapter goes on to examine the context within which claims over conservation lands are to be settled, and outlines the opposition expressed by groups in the debate.

CHAPTER THREE

CONSERVATION CONTEXT

As discussed in the previous chapter, the Waitangi Tribunal may make recommendations on the settlement of a claim. Alternatively, it may establish the historical circumstances surrounding a claim, leaving settlement to be decided by negotiation between Crown and iwi. The negotiation process is carried out exclusively between iwi and the Crown in recognition of the partnership that exists between the two, and the fact that only the Crown and iwi were signatories to the Treaty. The Crown has the task of representing wider societal views and values in the process. The resolution of Treaty claims and the provision of redress is thus a matter to be decided within the political process.

In this chapter the political context within which decisions with regard to Treaty claims over conservation lands are to be made is examined. After a discussion of the reasons conservation lands are the subject of a number of claims, I aim to uncover some of the political and institutional barriers limiting the settlement of claims with these lands.

CROWN LAND, CONSERVATION LAND AND CLAIM SETTLEMENT

Land claims to the Tribunal may only be made over Crown lands as 'Claims before the Tribunal are between Maori New Zealanders and the Crown' (Temm, 1990:88). Through the Treaty of Waitangi Amendment Act 1993 the Waitangi Tribunal may not consider claims over private land, nor may the Tribunal recommend that government purchase private land to use in claim settlement. However, the possibility may still exist, through direct negotiation, for government to agree to buy private land to vest in iwi ownership.

Since the state sector restructuring of the past decade¹⁷ most Crown lands have been apportioned between the Department of Conservation (DOC), and the state-owned enterprises (SOEs) Landcorp and Forestcorp¹⁸. The Treaty of Waitangi (State Enterprises) Act 1988 was passed after Maori protest over the sale of state assets to SOEs (as discussed in Chapter one). This Act provided that former Crown land which had passed to a SOE, or to another party through an SOE, could be returned to Maori ownership on the finding of the Waitangi Tribunal. This is the only case in which a finding of the Waitangi Tribunal is binding on the government (Oliver, 1991:12).

When Crown lands, such as those in DOC management, are to be sold, iwi are notified that they are able to register a claim over the land¹⁹. If the claim is upheld the Crown and iwi may negotiate for the return of the land to the claimant (Graham, 1994:11).

The largest remaining body of Crown land is that managed by the DOC (Mansfield, 1993:6). At present DOC has responsibility for managing over five million hectares of Crown land - about 30% of New Zealand's land mass (DOC, 1990). Within the conservation estate there are many areas and geographical features, such as mountains and rivers, with spiritual significance to Maori. Given this, there is a strong possibility that claim settlements sought by Maori could include land from that managed by DOC. Further, from a Maori perspective, there is a good case for government to allow this land to be used in claim settlement, if the settlement is a genuine attempt to incorporate Maori needs and aspirations in a durable resolution of the claim.

The Minister of Justice has recently stated that the Crown recognises the need to face up to Maori grievance claims and work with iwi to resolve these issues (Graham, unpub:3). The Crown has expressed its commitment to come to fair settlements for claimants, which will not lead to further claims in the future. In coming to any settlement, the government, representing the Crown, is also mindful of other political considerations. As well as having obligations with

¹⁷ See Kelsey, 1990 for a discussion of this process.

¹⁸ The Office of Crown Lands, administered by the Department of Survey and Land Information (DOSLI), administers residual areas of Crown land not allocated to either the Department of Conservation or SOEs (Mason, 1992:135).

¹⁹ Known as the Disposal of Surplus Crown Lands Mechanism (DSCLM). Claimants have 30 days to decide whether they wish to claim the surplus land under the DSCLM. The DSCLM applies to all iwi except Ngai Tahu, Tainui and Muriwhenua (Rudland, 1994:8).

regard to Maori and the Treaty, the government is accountable to the wider electorate including powerful pressure groups. The Crown is thus subject to the political need to balance the settlement of claims with the wider needs and values of the New Zealand public (Graham, unpub:3).

OPPOSITION FROM THE CONSERVATION AND RECREATION LOBBY

The conservation lobby has been very vocal in expressing its opposition to the settlement of claims with land managed by DOC. The opinions of these groups have been influential in the past both in terms of public opinion and political action. Buhrs and Bartlett (1993:42) note that the conservation movement been successful in raising conservation issues on the political agenda and pushing for changes in policies and institutions. For many, the conservation movement's influence in the restructuring of environmental administration during the late 1980s was an example of this success (Oddie and Perrett, 1992:xv).

Thus it is likely that these groups may also be able to influence government action on the issue of compensation for Treaty claims through the use of conservation land. The opinions of the conservation lobby range from those expressing extreme opposition, to groups which see the need for Maori compensation for grievances and are supportive of Maori claims over conservation lands.

Groups such as the Federated Mountain Clubs (FMC) and Public Access New Zealand (PANZ) have been most outspoken in their opposition on this issue. Hugh Barr, the president of the FMC, argues that areas in the conservation estate have spiritual and recreational importance to all New Zealanders and that Maori should not be given 'special privilege' in the management of this land (Barr, 1992:6). The FMC is concerned that the conservation estate is to be used by government as a '...cheap way of appeasing Maori claims' (Barr, 1993:15). The organisation considers that any change in ownership of public conservation land would lead to the imposition of user charges, limitations upon access and inappropriate use or development of the land, given its importance for conservation and recreation.

Recently the FMC have called for political support to ensure no title, or partial or complete management, of conservation lands is transferred to iwi in settlement of claims. Furthermore, the FMC has begun to express dissatisfaction with DOC for its willingness to move forward with settlements and consider further 'partnership' approaches to conservation land management (Federated Mountain Clubs, 1994:4-5 & 20).

The argument put forward by FMC has recently been used as the basis for a campaign coordinated by Public Access New Zealand (PANZ)²⁰, against the possibility that the Greenstone valley at the head of Lake Wakatipu, may be transferred to Ngai Tahu ownership (PANZ, 1994). PANZ argues that this would be detrimental to the public interest - that iwi control of such areas amounts to privatisation, which would have negative implications in terms of the conservation and recreation values important to the majority of New Zealanders. They argue that Ngai Tahu seeks to use the valley for tribal economic development, and that this would lead to inappropriate activities in the Greenstone, given its ecological fragility. The Ngai Tahu proposal to develop a monorail in the Greenstone valley is seen as an example of such inappropriate development²¹. Further, there is a fear that recreationalists would be charged to enter the area. Settling the Ngai Tahu claim in this manner, PANZ argues, serves to create an injustice against the majority of New Zealanders.

Other conservation groups appear to have more conciliatory views, and are more open to compromise, on this issue. Members of the Royal Forest and Bird Protection Society (RF&BPS) are divided on the issue of whether conservation land is suitable for the settlement of Treaty claims (see opinion in RF&BPS, 1994a). Nevertheless, the Society has recently formulated a working policy on this issue (see RF&BPS, 1994b). The Society's policy recognises that in 'exceptional cases' management (and/or title) to conservation land will have to be given to iwi in compensation for claims (RF&BPS, 1994b:29). However, this would be reliant on a number of conditions. These include the following:

- The iwi has a valid Treaty claim to the area in question
- The area does not have significant ecological values, and it is of special significance to the iwi or hapu

²⁰ Supported by the Otago section of the Fish and Game Council and the FMC.

²¹ Smith, K. 'There has to be a better way' pp. 15-16 in Royal Forest and Bird Protection Society, 1994.

- Other Crown land cannot be used as compensation and
- The iwi or hapu has the ability to manage the conservation values of the area (RF&BPS, 1994b:29).

In other circumstances the Society policy is based on the principle that

... the Crown should not consider "sharing" management of the conservation estate with iwi and/or hapu as a solution to Treaty claims but substitute other resources for the conservation estate subject to the claim (RF&BPS, 1994:29).

The Society is concerned that a consistent government policy regarding the issue be drawn up and that provision is made for public consultation. There is also concern that further compensation may be required by iwi which gain an interest in an area which remains a reserve, due to their inability to exercise complete control or rangatiratanga over that area (RF&BPS, 1994b:28-29).

This policy shows the willingness of the Society to compromise on the settlement of proven claims. Any compromise, however, is based on a number of principles. Important principles include the primacy of maintenance of the conservation estate and the conservation values of land within it, as well as public access rights. Additionally, it is important to the Society that iwi with management rights to an area of conservation land be disqualified from the economic exploitation of the resource (RF&BPS, 1994b:27-28).

The Maruia Society, at the other end of the spectrum in the debate, has expressed support for Maori claims to joint title of conservation land, while still upholding conservation or sustainable management principles (Salmon, 1994:pers. comm.).

In terms of the negotiation and settlement process, some in the conservation and recreation lobby have expressed the feeling that Treaty negotiations over conservation lands have been conducted in 'secret' without adequate public consultation. Public submissions are thought to have been ignored, while information given out to the public is not thought to have been sufficient to address public concerns (Round, 1994:11; Barr, 1993:14). This claim, brought to the attention of the Parliamentary Commissioner for the Environment (PCE, 1994) was the focus of a recent

report by that office. The report concluded that there was a need for members of the public to have some input into settlement negotiations through the provision of environmental information to the process, with regard to the environmental values of areas subject to Treaty claims.

GOVERNMENT POSITION

Earlier this year Cabinet announced the government position for negotiations on Treaty claims affecting conservation land (Office of the Minister of Conservation (OMC), 1994). The government position on this issue may be seen as an attempt to find a compromise between Maori claims and the demands of those opposing the issue in the conservation and recreation lobby. It may also be seen as an attempt to depoliticise this highly contentious issue. In essence conservation land is not seen by the government to be readily available for the settlement of claims, although it could be considered for that purpose in certain circumstances.

The government position is that it is prepared to consider transferring ownership or management of 'discrete sites' of conservation land to claimants. Discrete sites are defined as areas of special historical, cultural or spiritual significance to Maori such as burial sites (urupa), wahi tapu (sacred places), lakebeds, riverbeds, mountains and pounamu sites. These sites may be vested in iwi in full ownership, ownership under certain conditions, or iwi may be given a management role subject to ongoing Crown ownership and subject to appropriate conditions (OMC, 1994:2).

However, any transfer of ownership or management within the conservation estate to Maori is subject to a number of conditions including:

- Any changes of management of conservation land should only occur where it would not result in the loss of protection of natural and historic values
- Existing public access and recreational rights should not be reduced except to protect natural and historic values
- Any transfer of ownership would be restricted to small discrete parcels of land with very special significance. The transfer should not have any adverse effect on the management of the conservation estate or place important conservation values at risk

- The rights of existing concessionaires granted under conservation legislation should be protected (OMC, 1994:1-3).

From a Maori perspective the government's position is not seen as a finalised policy. Rather it is thought to be open to negotiation between the Crown and iwi (Mason, 1994:pers. comm.). Further it is not seen to be appropriate to set conditions on Maori land owners before land is returned, particularly given the Treaty guarantee of tribal rangatiratanga over all taonga. In the opinion of some Maori

The Crown needs to reestablish its own honour and demonstrate its goodwill to Maoridom by returning the land before it starts asking for concessions for the general public (Mutu, 1994:13).

This an important point of divergence between Maori and those who have placed themselves in opposition to the transfer of control or title over conservation lands in the settlement of Treaty claims. Central to Treaty claims is the call for the Crown to fully honour the terms of the Treaty and allow iwi to express their rangatiratanga. In order for this to occur Maori need to regain control over land and resources, which they are not at present able to manage according to their tribal preferences. If lands are returned subject to legal conditions, iwi may not have the ability to decide what is appropriate both in terms of the resource and tribal traditions and preferences. As such, when components of a claim settlement are subject to conditions, Maori expression of rangatiratanga, as it is defined from a Maori perspective (See Chapter two), is not allowed for. Settlements over which conditions apply may fit into the Crown's more limited definition of rangatiratanga as 'tribal self-management', wherein iwi have the right to organise as iwi and control their resources within the bounds of kawanatanga (the right of the Crown to govern and make laws) (Department of Justice, 1989:8-11).

The imposition of conditions on lands included in settlements may thus be justifiable in terms of a legal perspective of the Treaty. If constraints are imposed on iwi to which other landowners are not subject, this could be seen as unfair and not a just settlement of a Treaty claim. This may lead to the need for iwi to receive further compensation for the loss of their rangatiratanga, as identified by the RF&BPS policy (RF&BPS, 1994:28-29).

However, if iwi receive lands with conservation and recreation values, without these constraints, there may be a public fear that these values could be jeopardised. Iwi may in fact decide to allow public access, for example, once an area of land is returned to them. Nevertheless, uncertainty surrounding the outcome of iwi consideration of such issues may be the cause of the opposition of many in the conservation and recreation lobby to the transfer of conservation lands to iwi (see Round, 1994:11; Smith, 1994²²). From the Crown's perspective, these groups may be more likely to support iwi claims to conservation lands if they see that conditions are to be written into the title before the area is given over to iwi control.

THE ROLE OF THE MINISTER AND DEPARTMENT OF CONSERVATION

Negotiation of Treaty claims may be carried out by individual Ministers who have authority to act within specific areas. The Minister of Conservation may, in this case, enter into negotiation with respect to claims over conservation lands. For example, direct negotiation between iwi and the Minister has resulted in settlement of claims over Takapourewa (Stephen's Island) in the Marlborough region and Tutae Patu (or Woodend) Lagoon in Canterbury. There are no formal procedures for conducting these negotiations, as existing statutory frameworks are seen to be sufficient²³.

This negotiation situation may create difficulty for the Minister involved, in terms of balancing Crown obligations with the Ministerial mandate, as the PCE (1994:23) points out:

It can be observed that where Ministers with particular advocacy functions, such as the Minister of Conservation, also act as negotiators, there is potential for conflict of interest between their role as Crown negotiator on the one hand, and conservation advocate on the other.

In this case the Minister must operate within Cabinet guidelines and also on advice from the Department of Conservation (DOC).

²² 'There has to be a better way' pp. 15-16 in Royal Forest and Bird Protection Society (1994).

²³ When the settlement is to be implemented, statutory procedures involving public consultation may arise, as for example, under the Conservation Act or Reserves Act (PCE, 1994:23).

DOC, according to its legislative mandate, has a role as an advocate for conservation, while also working to give effect to the Treaty of Waitangi. These factors affect DOC's role within the claim settlement process and within the normal processes and procedures of the Department's work.

The Department of Conservation was established in 1987 through the Conservation Act of the same year. The main purpose of this Act is to

...promote the conservation of New Zealand's natural and historic resources... (Conservation Act, 1987: title).

Conservation in this context is defined as

...the preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options for future generations (Conservation Act, 1987: s.2).

DOC's primary function is the management of all land held under the Conservation Act for conservation purposes. DOC's other functions are to advocate and promote the benefits of conservation; to provide public information on conservation; to 'foster' recreation and 'allow' for tourism uses of conservation resources and to provide advice to the Minister of Conservation (Conservation Act, 1987: s.6).

In carrying out these functions, and administering and interpreting the Conservation Act, the Department must 'give effect to the principles of the Treaty of Waitangi' (Conservation Act, 1987: s.4). As discussed in Chapter two, the principles of the Treaty have not been defined with any finality. In this case DOC is involved in negotiation and discussion locally, and on a national level, in order to settle on its interpretation of the principles and what these mean in terms of actions and policy.

In administering the Conservation Act, DOC is required to 'strive to achieve' partnership with iwi (DOC, 1994). This requirement is carried out through consultation with iwi and also through inclusion of Maori members on advisory boards, such as the New Zealand Conservation Authority (NZCA). DOC does not have the same statutory obligations to consult with non-governmental organisations (NGOs), conservation groups or other interests. This partnership with iwi, however, is not fully operational at this point, as the following quote shows

In practice, it would be a significant advance on the present situation if the Department's relationship with iwi reached the level of the relationship the Department has with NGOs and some other sector groups (DOC, 1994).

From a Maori perspective it is felt that there has been a lot of consultation without Maori views being understood and taken into account, in both conservation and general environmental administration (Mutu, 1994:6).

With regard to the settlement of Treaty claims the Department recognises '...an inevitable relationship between the outcome of Treaty claims and the development of a partnership with iwi' (DOC, 1994). However, it also recognises an '...on-going requirement to give effect to the principles of the Treaty in the Department's general conservation and recreation work' (DOC, 1994). In effect this means that regardless of the outcomes of claim negotiations DOC must try to effect a partnership with iwi.

That this partnership is still not in place can be seen in the fact that many specific values of interest to Maori are not accorded great weighting in the management of conservation areas. For example, Maori are allowed to gather some food and culturally important materials in national parks and other conservation areas under the Conservation Act (s.30(2)) and other legislation such as the Native Plants Protection Act, 1934. Maori cultural harvest of wildlife on other land is also controlled by DOC through the Wildlife Act, 1953. This practice is controlled under a permit system, managed mainly by Regional Conservancies. Some Conservancies bring local iwi members in to advise decision makers on applications (NZCA, 1994:6). Nevertheless, the decision to grant permits generally remains with DOC staff, the Director General of Conservation and the Minister of Conservation (NZCA, 1994:10), relying mainly on western scientific knowledge (Ducker, 1994). Maori environmental knowledge and values do not have priority in the approval of such instances of 'cultural use' of resources. Hence there is a feeling that Maori

are losing their knowledge and experience of many areas of the natural environment through their values and cultural practices being to some extent excluded in the management of these areas (Mason, 1994:pers. comm.).

The position of the FMC with respect to any further Maori involvement in conservation shows the organisation's lack of understanding of or support for any moves toward a greater degree of partnership. The FMC is of the opinion that Maori are not actually excluded from the management of conservation lands. Barr (1992:6) argues that the provisions of the Conservation Act already safeguard Maori interests as they '...ensure Maoris [*sic*] have a role in management and free access, their sacred places are respected and they can take limited amounts of culturally important plants' (Barr, 1992).

SUMMARY

This chapter points to some of the political and institutional barriers to the settlement of Treaty claims through the use of conservation lands. When settlements over conservation lands are considered, the Minister and Department of Conservation have the role of advocating for conservation, while also balancing their Treaty obligations. Interest groups, which have a strong relationship with the Department of Conservation, may be able to exert some influence on the outcome of Treaty negotiations over DOC managed lands. However, as conservation and other interest groups are of the opinion that they are excluded from the settlement process by not being party to negotiations, they feel that their values and views are not being accounted for. Given this view, the level of opposition by these groups to the settlement of claims using conservation lands has escalated. In this respect these groups have had the ability to generate wider public support for their position and thus create potential electoral pressure on the government.

Public and interest group opposition is perhaps the main obstacle to the resolution of major claims where the ownership or management of conservation lands is at stake. This study now turns to a discussion of the attitudes on which the main opponents of such settlements base their arguments and opinions, to examine the reasons behind this opposition.

CHAPTER FOUR

DOMINANT ENVIRONMENTAL ATTITUDES IN THE DEBATE

In the past Maori and conservation interests were often seen as allies in terms of conservation issues. Currently, sectors of the conservation movement, along with other groups representing the 'public interest', are the main opponents to the Crown proceeding with the settlement of Treaty claims using conservation lands. This chapter explores the main concerns of these interests and the dominant environmental attitudes on which their concerns are based. Maori environmental attitudes are contrasted with dominant western attitudes, in an attempt to understand the reasons behind the conflict between the two.

THE NEW ZEALAND CONSERVATION MOVEMENT

The environmental and conservation movement has become an important force for change within New Zealand society over the past three decades. The growth of the movement in New Zealand parallels increasing international concern for halting human environmental destruction, saving wildlife and habitat from extinction and preserving shrinking areas of wilderness. Opinion arising from the conservation movement is generally critical of the settlement of Treaty claims through the use of conservation land, as noted earlier in this study. Conservation groups' primary opposition is based on the perceived negative implications for the ecological values of these areas. Conservation groups have also gained wider support on this issue. It may be assumed that the debate echoes the conservative views of society generally, on issues involving Maori and compensation for Treaty claims.

The conservation movement has proved to be successful in the past in gaining public support and political action for certain issues of concern to them. Scenery preservation and other land based issues have been the traditional focus for conservation campaigns, the aims of which included forest and species preservation and provision for national parks (Buhrs & Bartlett, 1993:40-45). The protection of recreational opportunities in wilderness areas has also been a motivating factor underlying conservation campaigns (Hall, 1988:44).

Since the beginnings of these concerns for environmental protection there has been a perceived alliance between Maori and the conservation movement on conservation issues. The tendency for the environmental movement to gain support from other groups in society has been noted in an international context (Eckersley, 1989:206). In New Zealand, Maori and the conservation movement have had similar aspirations in attempting to protect native ecosystems, historic and culturally important sites and water quality. This has led to Maori becoming involved in environmental groups and working with Pakeha conservationists (RF&BPS, 1988:2).

In addition, early claims to the Waitangi Tribunal, such as the Motunui-Waitara, Kaituna and Manukau, demonstrate Maori concern about environmental degradation, as well as its effects on Maori values. These claims all included aspects of the environmental damage caused by the disposal of effluent into water bodies. In the Motunui claim Maori were successful in halting the proposed discharge of industrial effluent onto coastal reefs important to the Te Ati Awa tribe for food gathering purposes. The claim also resulted in an upgrade of the Waitara sewage treatment system. Similarly, the Kaituna claim resulted in land based disposal of Rotorua sewage which was to be disposed of into the Kaituna River. The Manukau claim was successful in bringing to the public attention the disastrous consequences of land and industrial development for both the ecological balance of the waters of the Harbour and for Maori values associated with the area (Oliver, 1990:96-98).

An important aspect of these claims was that they primarily focused on the implications of pollution on mahinga kai. While concentrating on the attainment of similar outcomes as those supported by the conservation movement more generally, Maori concerns were more specific, arising from the context of Maori values and based mainly on the use values, rather than the intrinsic values, of the environment. Thus the alliance between the conservation movement and Maori was based on the perception that both groups had similar objectives, albeit with different reasons for pursuing those objectives.

At the time of these claims the Tribunal was only able to consider claims relating to grievances arising from Crown policies and actions after 1975. Once the role of the Tribunal was expanded in 1985 claims to the Tribunal became much wider and concerned with the return of taonga. It is clear that environmental quality is important to Maori communities. Other issues, however, such as regaining the means for iwi to provide for their people and the right to exercise tino

rangatiratanga over their own resources, are seen as more pressing at the present time. Maori attempts to regain resources, many of which are also seen as important to the conservation movement, is the main point on which the perceived alliance between the groups has crumbled.

With respect to their role in the reallocation of lands to SOEs and DOC, it may be argued that Maori may have been more concerned to ensure land remained in Crown ownership in order that it would be available to settle future claims, than they were with ensuring the protection of the conservation values of those lands. This could be seen as having parallels with the NZMC vs. Attorney General case (as discussed in Chapter two). In this case Maori were concerned to stop land being transferred into the control of SOEs as it would then be unavailable for claim under the Treaty. They were not as concerned with other implications of the transfers, for example the increasing privatisation of public resources.

Some sectors of the conservation movement have recently become concerned that remaining public land is under threat of 'privatisation' from sale to overseas interests, or through being granted to Maori in settlement of Treaty claims. Conservation groups which have expressed reservations on the settlement of Treaty claims with conservation land have been joined by groups with overlapping concerns such as PANZ and FMC. These groups are more extreme in their opposition on the issue, arguing that they represent the 'public interest' in these lands. Arguments relating to the public interest used to oppose Maori control of conservation lands range from the protection of public access to back-country lands for public enjoyment and recreation, to such values as indigenous forest, wildlife habitat and specific species protection (PCE, 1994:7).

Common to this opposition is the underlying assumption that certain lands should be held in public ownership and management for the protection of these values. However, the conservation estate is not managed solely for the protection of conservation values, and as noted by O'Connor (unpub.:7):

...evidence is becoming rather painfully obvious that management of conservation estate for commercial returns from recreational and touristic concessions is in some cases beginning to be asserted over management for nature conservation.

These land uses allowed by DOC, and others such as moss harvesting, may not always work in terms of protecting conservation values. Public access and tourism, in some areas, may actually add to the destruction of natural values. Additionally, the fact that DOC is not well funded means that a number of areas in DOC management are not intensively managed due to lack of resources to gather information, carry out programmes and monitor outcomes.

The assumption that state ownership has positive implications for conservation is somewhat ironic given the opinion of many environmentalists that the state was responsible for much environmental degradation prior to the restructuring of environmental administration (Buhrs & Bartlett, 1993:90). Before this time government policies and actions were thought to have contributed the destruction of natural and scenic values through major hydro-electric dam construction, deforestation and inappropriate land development, amongst other things (Buhrs & Bartlett, 1993:94).

The creation of DOC with a mandate to manage land for its conservation values, appears to have convinced the conservation lobby that public ownership and management of land is the best management regime for an area with such values. However, the implications of such bureaucratic solutions to environmental problems may also have their own difficulties. Aldo Leopold's insight into the United States environmental management regime of several decades ago is relevant in this situation:

There is a clear tendency in American conservation to relegate to government all necessary jobs that private landowners fail to perform...Nevertheless the question arises: What is the ultimate magnitude of the enterprise? At what point will governmental conservation, like the mastodon, become handicapped by its own dimensions? The answer, if there is any, seems to be in a land ethic, or some other force which assigns more obligation to the private landowner (Leopold, 1949, cited in Park, 1987:96²⁴).

Maori claims over conservation lands certainly raise the option of Maori having more responsibility with respect to the management of these lands. While Maori attitudes (and possibly practices) toward land may be a contribution toward fulfilling Leopold's notion of the expression of a land ethic, this arrangement threatens the present public ownership and management balance, which the conservation lobby has struggled to achieve. Pakeha society and

²⁴ 'Understanding and Conserving the Natural Landscape' pp. 88-99 in Phillips, 1987.

the conservation lobby clearly feel that this may create the potential for Maori to behave in ways which the majority Pakeha society sees as inappropriate on lands deemed to be important for their conservation values. That is, Maori environmental uses and attitudes may not fit in with any existing Pakeha land ethic. Maori claims may now be seen to pose a challenge to dominant attitudes toward environmental use and protection, rather than reinforcing environmentalists attitudes as in the past. With this point in mind I move to a discussion of dominant environmental attitudes and the implications of Maori environmental attitudes within this framework.

DOMINANT ENVIRONMENTAL ATTITUDES UNDERLYING THE DEBATE

James (1990) argues that contemporary ideas relating to the conservation of natural and wild areas of New Zealand have their roots in a reaction against the exploitative attitude toward nature of the dominant pioneering spirit of the nineteenth century. The first European settlers arriving in New Zealand were of the view that this was an unpopulated country, ready to be developed and exploited to enhance the material well being of the pioneers (Wynn, 1977:124). The prospect of land ownership was an important feature of New Zealand as a colony, drawing settlers from Britain who had little opportunity to own land there²⁵. To facilitate this the settler government used a number of methods, ranging from purchase to confiscation, to alienate land from Maori ownership and control, despite guarantees made through the Treaty of Waitangi.

The Crown sold much of this land on to settlers for resource development (Thomas, 1981:5). By the 1890s most of the best lands in New Zealand had become freehold. Large areas still remained in Crown ownership, however, with few exceptions these were not very high quality lands, in terms of resource development and pastoral production (Thomas, 1981:10).

During this period New Zealand's forested environment was very much seen by the pioneers as an obstacle to growth and progress, to be overcome through the tenacity of the pioneer spirit.

²⁵ Steven, R. 'Land and White Settler Colonialism' in Novitz & Willmott, 1989.

European settlers sought to create '...a civilization in the wilderness', to create home and society in their new environment (Wynn, 1977:135). For settler society

...the exploitation of the New Zealand forest was a constructive rather than a destructive process; it yielded important export revenues and enhanced the value of the country by converting "waste lands" into a "higher" use as farms (Wynn, 1977:135).

At this time, and arguably into the present, progress and the provision for material needs were dominant social values. As the bush was seen as an obstacle to progress, so too were the Maori people under whose stewardship '...[t]he wilderness remained an idle waste' (Golder cited in William, 1867²⁶).

However, this worldview was not without its opponents. As early as the 1870s there were political attempts to protect native forests against the profligate overexploitation of settler society (Wynn, 1977:129). James (1990:266) sees this as a reaction against the exploitative perspective toward nature, by emerging perspectives which valued nature for scientific, aesthetic and ecological reasons. James characterises these perspectives in the following way.

From the *exploitative* perspective people have a sense of superiority over and a desire to control nature. Natural resources are regarded as existing for the material benefit of humans. James (1990:264) proposes that this was the dominant perspective throughout the phase of British colonial settlement of New Zealand. From the *scientific* perspective nature is seen as an object of study and a means to acquire knowledge. In James' (1990:263) view this perspective has been used to control and exploit the natural world and so has parallels with the exploitative perspective. This perspective, of course, has also had positive implications in terms of nature protection. The *aesthetic* perspective focuses on nature's beauty and artistic appeal. In common with the first two perspectives the aesthetic perspective may also include an attitude of control of nature, changing the natural environment to fit into people's view of what is aesthetically pleasing (James, 1990:263). However, this perspective also includes the aesthetic appeal of unmodified nature.

²⁶ In Jones, L. 'Versions of the dream: Literature and the search for identity' in Novitz & Willmott, 1989.

From these three perspectives human society is seen as separate from the natural environment, a persistent feature of western tradition (Frawley, 1992:216). The *ecological* perspective differs from the above perspectives as it regards humans as part of ecological systems, neither above, nor apart from, nature (James, 1990:264). From this perspective there is opposition to the development ethos and the view that humans may dominate and exploit nature.

James argues that these four perspectives are the basis of current Pakeha attitudes toward the environment. Frawley (1992), in an analysis of the origins of Australian environmentalism, agrees that there are many 'visions' contributing to dominant thought with regard to the environment. The predominant dimensions are the *scientific*, *Romantic* (within which the aesthetic perspective may be seen to fit), *colonial* (exploitative), *national* and *ecological*. These dimensions are similar to those identified by James (1990). In addition, the national vision is related to a sense of pride in the national landscape and the development of a cultural identity. Such attitudes are also identifiable in New Zealand in the extent to which natural landscapes feature as a symbol of national cultural identity.

In Frawley's (1992:225) view these visions have developed through time, to shape current environmental attitudes. The scientific vision has given rise to support for strict preservation of natural ecosystems. In the Romantic vision lies one of the motivating forces for the early national park and current wilderness preservation movement²⁷. The original colonial vision developed from the exploitative perspective to the approach embodied by the utilitarian concept of the 'wise use' of resources. This is now expressed by notions of sustainable development in what I will term the 'post-colonial' perspective. The national vision is expressed through national pride in both natural and built national heritage. Finally, the ecological vision is seen to have links with the scientific, romantic and national visions and has concerns ranging from nature conservation, urban quality of life issues and the environmental effects of all human actions. This vision is seen as the basis of the present environmental movement.

²⁷ Runte (1979:*passim*) argues that the perceived economic worthlessness of lands was the most important criteria for the granting of protected area status in the development of the national park system in North America.

Frawley (1992:233) argues that the environmental movement is still an alternative minority paradigm in Australia and other developed western countries. However, it may be seen that the environmental movement incorporates a number of threads of environmental thought which occur throughout society. Thus on the issue of Maori claims to conservation land, the environmental and conservation movement expresses a number of views which are common to a wide cross section of society.

The interaction between these visions has led to the debate as to the characteristics and goals of a society which would be ecologically, socially and economically sustainable. This debate is seen to occur within a legislative and policy framework in which human interaction with the environment is regulated. Frawley (1992:224) proposes that this framework has two components which can be broadly classified as protective or exploitative. The protective component is legislation or policy which emphasises ‘..protecting the environment from undue degradation by human activity as well as that which provides for the conservation of natural and cultural resources’ (Frawley, 1992:224). The exploitative component is legislation or policy which facilitates development activity.

This framework also corresponds to that in which the current debate over the settlement of Treaty claims is set. There appears to be a dominant social attitude that land may be divided into that suitable for use and development as opposed to that which should be protected for its values appealing to the wider public, such as conservation, recreation and scenic values. The values of the first category of lands are thought to be served by private ownership, while the second category of lands are thought to require state ownership and management in order that the values characteristic of these lands are protected. Privately owned lands are not to be subject to claims under the Treaty.

There is evidence that these attitudes may be changing, with individual landowners taking greater responsibility for encouraging conservation on private land. Examples of this may be seen in the growing number of Open Space Covenants granted by the Queen Elizabeth II National Trust (QEII National Trust, 1994), covenants under the Conservation Act and the emergence of Landcare groups around the country. However, generally the environmental management reforms of the past decade have, in effect, divided lands between those in private ownership and those protected in the conservation estate.

The private ownership of land gives the owner exclusive rights to use the land and to transfer it at will (Goodin,1992:194²⁸). Goodin argues that a right to property also entails a responsibility to preserve. The responsibility of owners with respect to land is formalised by planning controls, especially through the Resource Management Act, 1991 (RMA). The RMA is intended to be enabling legislation, granting a land owner the right to take any action they choose on their land, so long as the effects of that action fit into the purpose of the Act; to promote the sustainable management of resources. However, as noted earlier, what actually constitutes sustainability or a commonly agreed upon ethic of environmental responsibility, is still a matter of debate between groups with different perspectives. Thus, although the ideal vision of the conservation movement is based in the ecological perspective, the perception that people are separate from and inevitably damaging to the environment prevails. This has led to the pragmatic response that people's activities must be severely constrained in order to preserve natural values.

In important areas people's activities have been effectively constrained by the separation of lands to be protected and preserved from other lands which may be developed. Protected land managed by the Department of Conservation is subject to much stricter controls as to what type of actions may be undertaken, in order that the conservation and other values of that land be preserved.

Maori claims to protected land may be seen as a challenge to this approach to environmental protection. One reason for this may be due to the ambiguity of where Maori environmental thought fits into the schema of dominant environmental attitudes. The following discussion of Maori attitudes with regard to environment attempts to show how traditional Maori thought relates to dominant environmental thought.

²⁸ Goodin, R. 'Property rights and preservationist duties' pp. 192-221 in Oddie and Perrett (1992).

MAORI ENVIRONMENTAL ATTITUDES

The holistic aspect of traditional Maori thought, that humans were created out of the natural world and are an integral part of it, generally corresponds to the ecological dimension of Pakeha thought as discussed above. For Maori this relationship implies that '...man [*sic*] was created to become a part of the natural order and he must remain in harmony with the natural order if he is to continue to survive' (Te Wananga o Raukawa, Otaki, 1989:no page). This proposition is also integral to the perspective of the environmental movement. However, the traditional Maori relationship with the environment may be seen to have parallels with aspects of the post-colonial perspective, namely that people have rights to use nature, albeit in a 'sustainable' manner.

Maori relationships with the natural environment have developed from the time of first Polynesian arrival in this country. In the process many destructive environmental changes occurred, as Polynesian settlers learnt to adapt to a new land. For instance, dry forests were converted through fire into scrub, fern or grasslands, and nearly thirty species of birds became extinct during the first few hundred years of Polynesian settlement²⁹. In time, however, Maori culture developed a spiritual and practical approach toward the natural world based on centuries of experience³⁰.

The spiritual basis of Maori attitudes toward the natural environment means that heritage values associated with *tupuna* (ancestors) are more important to many Maori than the aesthetic, scientific and conservation values which motivate many Pakeha environmentalists (O'Regan, 1988:5). Additionally, there is a conflict between Maori and Pakeha views of conservation issues in terms of the use of the natural environment and its resources. O'Regan (1988:5) points out that the root of this conflict lies in the Maori view that

...conservation is more to do with the "wise use of resources", rather than absolute protection. This is consistent with the Maori heritage of land use which frequently involved substantial landscape modification for horticulture, water control and fortification building.

²⁹ Leach, H. 'In the beginning' p. 25 in Phillips, 1987.

³⁰ Traditional Maori beliefs and practices with respect to the natural environment are discussed in a number of publications, refer for instance to Orbell, 1985; Manatu Maori, 1990; Te Wananga O Raukawa, Otaki, 1989.

Further, traditional Maori attitudes toward the natural world do not separate land into that of high natural value, worthy of preservation and other less important lands which are not seen to have 'conservation value'. Traditionally, all tribal lands were of importance as '...the major source and expression of identity, spirituality, social structure and economic resource' (Challenger, 1988:8).

Without presenting traditional Maori attitudes toward the environment as the panacea for all environmental or conservation problems of the present day, this discussion points to the fact that Maori perspectives with regard to land are holistic, encompassing many values within one area. Conservation is an integral part of traditional Maori approaches to land use, extending over all lands with which iwi have a traditional connection. The traditional Maori attitude toward the environment has parallels with aspects of both the post-colonial and ecological dimensions of dominant environmental thought. If Maori are granted control or ownership of areas of the conservation estate they may wish to manage it in line with these values in order to express their rangatiratanga. The development of lands for non-traditional uses which fit within traditional values may not be seen as a contradiction, rather as a form of cultural development.

If Maori gain control of conservation land there is the potential for a blurring of the lines between activities seen as acceptable on land set aside for conservation and that which is available for development. This may be considered by the conservation movement, and other groups opposing Maori control of conservation lands, as undermining the gains won for conservation in the last three decades. Another concern for these groups is the perception that although Maori have a traditional dimension to their thought, they also wish to have greater involvement in the contemporary economic system. This is seen as a further threat to the preservation of natural values on conservation land in Maori ownership or management. There is a fear that a major factor motivating Maori to claim these lands is to enable iwi to become involved in economic development (Barr, 1994:4) which may lead to what the conservation movement sees as inappropriate use or development of these lands.

SUMMARY

This chapter outlines the environmental attitudes on which opponents of the settlement of Treaty claims with conservation lands base their perception of the issue. Maori environmental attitudes, are seen to be in conflict with the preservationist stance underlying current arrangements for the protection of the natural environment. Traditional Maori thought as discussed in this chapter, in contrast to dominant western/Pakeha environmental attitudes, sees humans very much as part of the natural environment while also having rights to use environmental resources. This view does not fit well with the spectrum of dominant attitudes whereby these two ways of seeing the human-nature relationship are thought to be in opposition to each other, rather than complementary. Thus there is a tension between the aims of the two groups. The conservation lobby and its supporters insist on conservation lands remaining in public ownership to allow for the protection of the values on that land. Maori, on the other hand, do not traditionally separate natural values from other land uses, and wish to gain some control of lands in the conservation estate in order to exercise their Treaty rights.

The following chapter discusses possibilities for reconciling these competing interests, through an examination of examples of the resolution of indigenous people's claims over conservation lands.

CHAPTER FIVE

TOWARD CLAIM SETTLEMENT

This chapter explores the possibility of moving toward the settlement of Treaty claims over conservation lands through a discussion of the outcomes of such settlements in an international context and within New Zealand. Two international case studies of settlements over national parks are examined. The first case is that of the settlement agreement involving Uluru (Ayres Rock-Mount Olga) National Park in Australia. In the second case study the Nunavut agreement in Northern Canada is discussed generally, and the outcome of negotiations with respect to national parks within this agreement are examined. The settlement negotiated between Ngai Tahu and the Crown over Tutae Patu lagoon, an area with lesser value in terms of conservation, is then discussed.

A comparison of these cases illustrates the similar issues which have been faced in negotiating settlements in all three countries. It may not be possible to transpose international models into the New Zealand context due to factors unique to this country. However, the aim of this chapter is to suggest that an examination of overseas experience may provide opportunity for the development of options for the settlement of claims over lands with high conservation values in New Zealand.

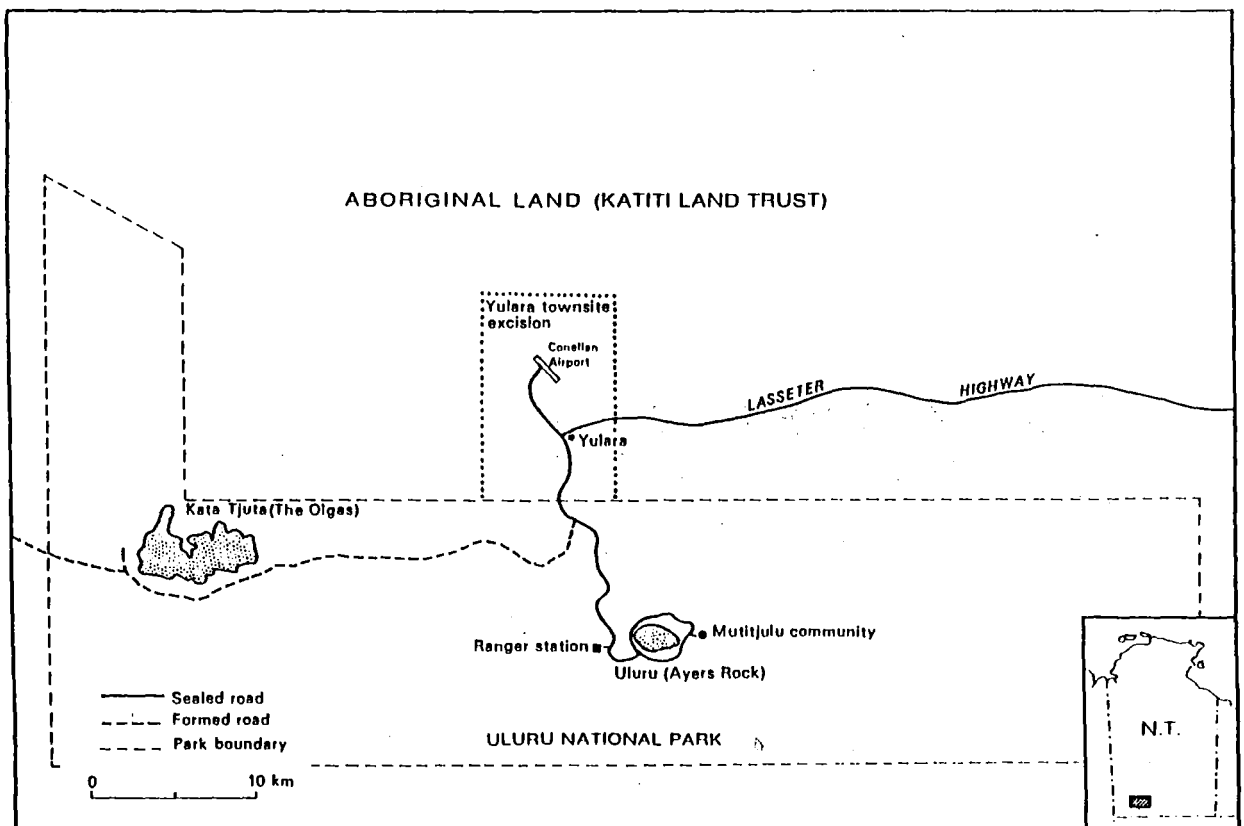
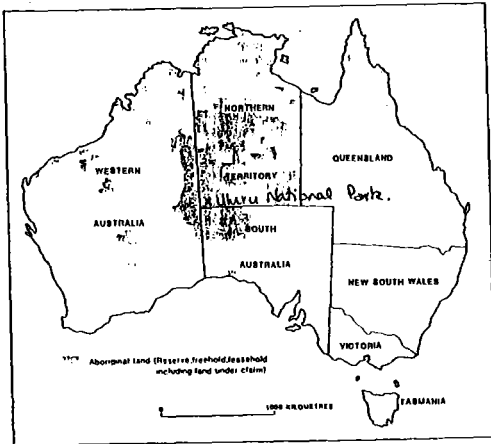
ULURU CLAIM

The Aboriginal people associated with Uluru (Ayres Rock-Mount Olga) National Park³¹ [See Map 1], in the Northern Territory of Australia, laid claim to the park in an expression of the need to safeguard the land to which they felt they belonged. The area around Uluru is thought to have been inhabited by Aboriginals for over 10,000 years (Layton, 1986:17). For Aboriginal people associated with the area, their culture has always existed there. Uluru has a central place in the religion, culture and subsistence lifestyle of Anangu (Toyne & Vachon, 1984:134; Layton, 1986).

³¹ The Pitjanjatjara, Ngaanyatjara and Yankunytjatjara peoples are *Aanangu*, or '...the human beings who belong with the earth' (Toyne & Vachon, 1984:5) in the Uluru area.

MAP 1

Location of Uluru (Ayres Rock-Mount Olga) National Park, Northern Territory, Australia



Source: Altman, 1988:98

The Uluru area was mapped by white explorers in the 1870s, after which time the encroachment of pastoralism and settlement began to disrupt traditional Aboriginal ways of life. In what was, with hindsight, a paternalistic attempt to protect Aboriginals against these disruptions a large Aboriginal reserve was created in Central Australia in 1920 (Layton, 1986:73). This reserve took in the Uluru (Ayres Rock) and Kata Tjuta (Mount Olga) region. By the 1940s Ayres Rock had become a tourist destination and in 1958 the Ayres Rock-Mount Olga area was taken out of the Aboriginal Reserve. This area was managed by the Northern Territory Reserves Board as a tourist and wildlife reserve (Layton, 1986:76). The area was later gazetted as a national park under Commonwealth Government legislation, which had the legal effect of alienating the Uluru land from Crown ownership (Brown, 1992:57).

In 1958 only a few Aboriginal families were living at Uluru and tourist numbers were low. By the 1960s however, increasing numbers of tourists and worsening interactions between visitors and Anangu, led to the remaining Aboriginals being pressured to move away from Uluru. By the late 1960s many of the traditional owners of places in the park were scattered throughout Central Australia. However, despite government intervention Anangu continued to travel through the park and in 1974 set up a permanent camp near the rock (Toyne & Vachon, 1984:135).

The Aboriginal Land Rights (Northern Territory) Act, 1976, allowed traditional owners the right to claim unalienated Crown land. At this time concerns were being expressed by the traditional owners of Uluru about the desecration of sacred places around the Rock by tourists and tourist operators (Layton, 1986:93). Additionally, Aboriginal people living within the park's boundaries were frustrated by the limits imposed on them by the park regime. For example Anangu were confined to certain camps; their privacy was often invaded by tourists; Aboriginal hunting and firewood gathering was subject to restriction and Aboriginal people had no right to enforce their own regulations to control alcohol within the park (Layton, 1986:97). Although Anangu had more involvement in the park in the 1970s than in the previous decade they had very little power or control over the decisions of government agencies managing the park.

Anangu hopes to gain title to their territories including the national park, were embodied in their claim under the Land Rights Act. The claim was first heard in 1979, however it was found that the national park could not be claimed as it was no longer Crown land. The remaining area of the claim became Aboriginal land. Despite opposition by the Northern Territory Government,

public pressure led to Commonwealth Government passing amendments to the Land Rights Act in 1983, thus acknowledging Aboriginal title to Uluru (Layton, 1986:117-118). Uluru National Park is now held in freehold title by Anangu.

Title to Uluru was handed back to Anangu in 1985 on the condition that the park would be leased back to the Australian National Parks and Wildlife Service (ANPWS). The return of title to Aboriginal owners may be seen as a symbolic gesture due to this condition, which was designed to protect the existing interests of other Australians over their 'national symbol'. However, negative aspects of this agreement were seen by the traditional owners of Uluru, to be balanced by administrative arrangements which ensure traditional owners have a significant role in the management of the park (Anon, 1986).

Park management planning and decision making is carried out by a board on which Aborigines have a majority vote and hence an effective veto over park management (Anon, 1986). The ANPWS carry out the day to day care and management of the park. Under the lease agreement '...the traditional rights of Aborigines to use the Park for hunting, food gathering and ceremonial purposes are protected' (Blowes, 1991:5). Amongst other things the lease also provides for the protection of sites of significance to the traditional owners, the use of traditional Aboriginal knowledge and skills in park management and the training and employment of Aboriginal people to carry out park management duties (Blowes, 1991:5).

The leaseback agreement is for a term of 99 years. Traditional owners receive an annual rental of \$75,000 plus 20% of entrance charges. This money is administered by the Mutitjulu Community which represents Anangu living at Uluru. The money is used mainly for community development projects (Uluru National Park, 1987:3). Through this agreement, Anangu have been able to take responsibility for many issues affecting their community. For instance Uluru Aborigines have chosen to close their community living area to tourists visiting the park. Motels and other tourist facilities were relocated to the Yulara tourist resort outside the park boundaries. The leaseback arrangements have thus enabled the Aboriginal people of Uluru to control aspects of their daily lives within the national park framework (Rowse, 1992:248).

NUNAVUT CLAIM

Inuit culture in the Northern Canadian Arctic has developed since the area was first settled 4,000 years ago. Inuit culture and society was based on a nomadic, seasonal hunting economy, and the society had become well adjusted to the harsh Arctic conditions (Purich, 1992:25-29). Contact with Europeans, and later Canadian assertion of sovereignty over Northern Canada, had little impact on Inuit society until after World War II. However, during the 1950s the material wealth of the region was seen as important to the aims of national development (Merritt et al., 1989:1).

In this era the North was opened up for resource development, while Inuit were moved into government settlements in an attempt to raise Inuit living standards and more easily deliver social services seen as essential by the state. These actions brought about changes to the traditional Inuit economy and relationship to the land, and took away Inuit control of their affairs. Consequent social problems included rising crime rates and dependence on welfare (Purich, 1992:49).

The political expression of Inuit concerns about their dispossession from the land began in the 1950s (Merritt et al., 1989:3), but it was not until the 1970s that these concerns could be acted on. In 1973 the Federal Government announced that it would negotiate to settle claims of aboriginal title to land with peoples who had not signed treaties with the Crown during Canada's colonisation (Fenge, 1993:197). The creation of national parks in the North was also on the government agenda at this time. However, plans to establish three national parks in Inuit territories met with resistance from aboriginal communities. In response to this the *National Parks Act*, 1974, allowed for the establishment of 'national park reserves' which could not be declared national parks until land claims over the areas were settled. Two national park reserves were then created in the Nunavut ('Our Land') claim area. Three further areas were proposed as national parks (Fenge, 1993).

In 1976 the Inuit Tapirisat of Canada (ITC) (the organisation representing Inuit at the time) put forward a proposal for the settlement of the land claim over Northern Canada along with the creation of the Inuit governed territory of Nunavut. This claim was split into two components - the Western Arctic Inuvialut claim which was settled in 1984, and the Eastern Arctic Nunavut

claim, settled in 1993 (Cant, 1993:14). Through the Nunavut claim Inuit sought to regain substantial title to lands within their traditional territory. They also sought the right to participate in administration and resource management in the territory (Merritt et al., 1989:74).

Under the Nunavut agreement the Territory of Nunavut would be created by 1999 [See Map 2]. The Nunavut territory would be separated from the North Western Territory and a separate public government would be established. As the majority of the population in Nunavut is Inuit this effectively gives the Inuit people self government, within limits set through the agreement. In addition to the establishment of a new territory, Inuit could select, for outright ownership, 352,000 square kilometres of land³² (Purich, 1992:130). Importantly, Inuit are given significant involvement in land-use planning, environmental and wildlife management over all lands within the Nunavut area, through management boards comprising half Inuit and half Government representatives. Additionally Inuit people are to be trained and employed in all sectors of the Nunavut public service (Purich, 1992:133).

With regard to national parks, Inuit are to be involved in management through a joint Inuit/Government parks planning and management committee. This committee is to be made up of half Inuit and Government representatives. Further, Inuit are given free access to all lands in the Nunavut area, including national parks, for the purposes of wildlife harvesting (Fenge, 1993:199-200). These conditions alleviated Inuit fears of a conflict between recreational and Inuit uses of national parks. Inuit negotiators realised that

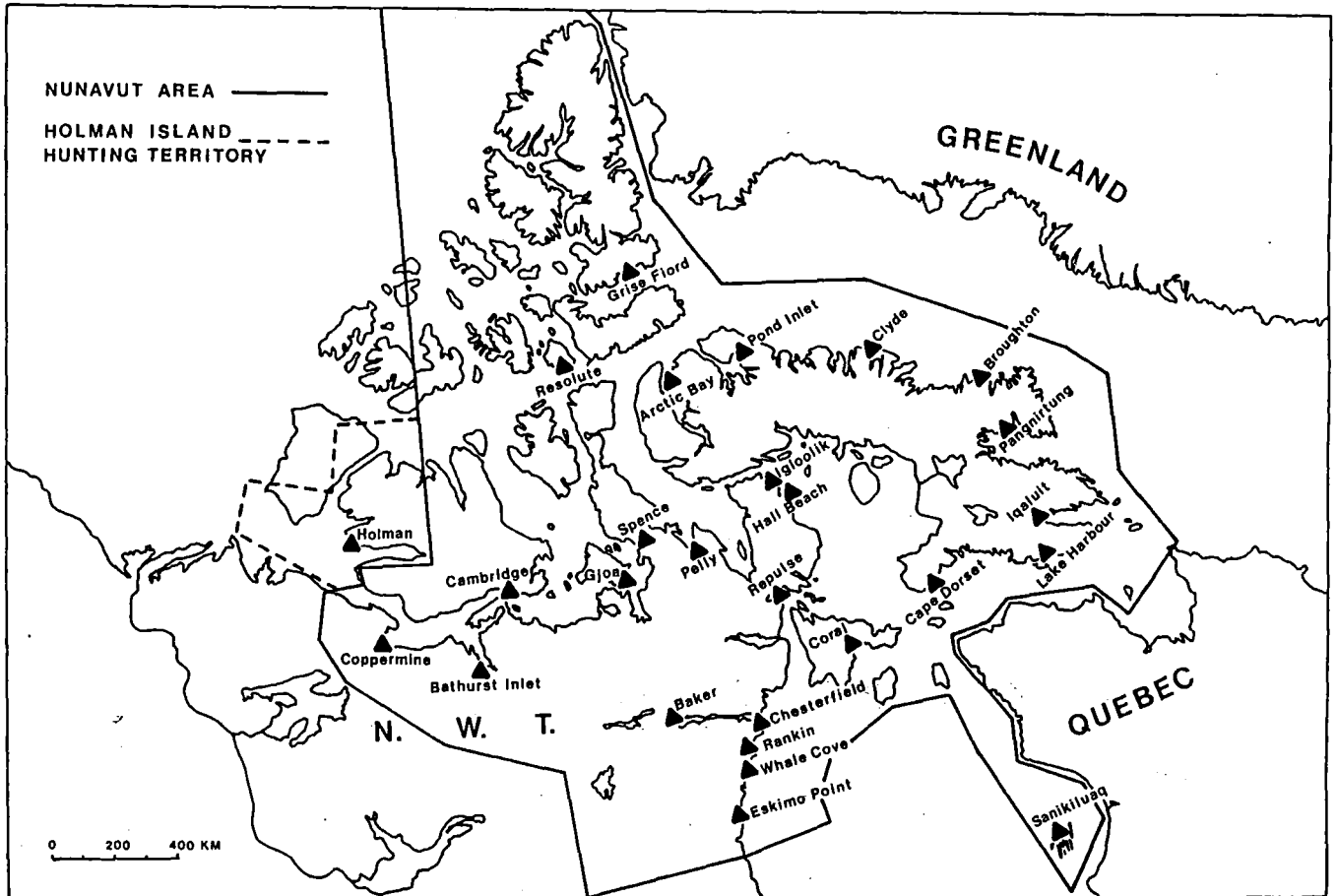
...if they could control the use of land, wildlife and natural resources in national parks through joint management regimes, they need not own the land in question; appropriately sited national parks could allow Inuit to concentrate their land selections elsewhere (Fenge, 1993:202).

However, the Canadian Government's position on national parks is that title to these areas must be held by the government. Thus national parks could not be established until aboriginal title to the land in question was surrendered to the Crown (Fenge, 1993:198). This point proved problematic in the negotiations over national parks in the final Nunavut agreement. Two proposed national parks at Wager Bay and Bluenose Lake caused difficulty, as Inuit claimed land in ecologically sensitive areas. In the case of Wager Bay, the area selected was seen as having

³² Representing 9.9 percent of their traditional territory

MAP 2

Area Covered by the Nunavut Agreement, Northern Canada



Source: Abel & Friesen, 1991:290

potential for economic development associated with guiding and sport hunting. Government would not agree to exclude these areas from the national park boundaries, neither would they guarantee the establishment of these parks, even if Inuit agreed not to claim the areas. Therefore, Inuit insisted on owning these areas, and the national park could not go ahead (Fenge, 1993:202-205).

In the cases of the existing Auyuittuq and North Baffin park reserves the park boundaries were changed to accommodate Inuit land selections on the coastal edges of the park. These areas are expected to be established as national parks in 1996 and 1997 respectively. A third national park, Ellesmere Island, is expected to be established in 1996 (New Parks North, 1994:6-7).

TUTAE PATU LAGOON AGREEMENT

Tutae Patu Lagoon, between the Waimakariri and Ashley Rivers in Canterbury, is a traditional mahinga kai of importance to Ngai Tahu. The surrounding area is the burial site of a number of important Ngai Tahu chiefs (Tau et al, 1990:5-15). The Lagoon is within an area of land identified by the Waitangi Tribunal, where the Crown failed to retain land requested as a reserve by Ngai Tahu at the time of the Kemp purchase (Waitangi Tribunal, vol. 3, 1991:480). Prior to the settlement negotiated with Ngai Tahu over the area, the Lagoon was managed as a wildlife management reserve by the Department of Conservation (DOC). Surrounding areas were managed as recreation reserves by the Waimakariri District Council and as a conservation area by DOC.

The Lagoon and surrounding areas are thought to have low conservation values. The flora of the area surrounding the Lagoon is described by DOC as being so heavily modified that no intact native community remains, having been largely replaced by pines, lupin and marram grass. The major value of the area is seen to be for public recreation, mainly walking (DOC, unpub.:2). The Lagoon itself provides a habitat for waterfowl and eels. The flora is mainly exotic, dominated by willow (DOC, unpub.:2). The area does not have great value to the recreational lobby either, not being a highly scenic or wild environment.

Through the proposed settlement, which is being put in place at the present time, Ngai Tahu will receive freehold title to the Lagoon. DOC notes that this agreement recognises Crown obligations under Article II of the Treaty of Waitangi (DOC, unpub.:3).

Under the agreement the recreation reserve and conservation area will be vested in a joint administering body comprising Ngai Tahu and the Waimakariri District Council. This body will prepare a management plan for the area, and Ngai Tahu will include Tutae Patu in this planning process. The rights of public access to the areas in joint management will remain as at present. Access to the Lagoon, which is to be owned and managed by Ngai Tahu alone, will be granted at the discretion of the iwi (DOC, unpub.:4). Public consultation will be included in the planning process for both areas.

Ngai Tahu plans for the management of the Lagoon include the restoration of the mahinga kai and taonga area to their natural state, as far as possible. The iwi wishes to resume the gathering of food, especially eels. An existing walkway will be retained to allow recreationalists and tourists to view and visit the restored habitat (DOC, unpub.:3). For Ngai Tahu the restoration of the Lagoon's ecosystem, rather than the fact that the iwi has regained ownership of the area, is the essence of the exercise of rangatiratanga embodied by the settlement (Tau, 1994:pers. comm.).

DISCUSSION

The international settlements discussed above have been developed and adopted in a different political, social and economic context to that existing in New Zealand. However, similarities may be noted between the colonial histories of Australia, Canada and New Zealand. Parallels between the three countries may also be seen in the loss of control over areas of traditional importance and the lack of self determination experienced by indigenous populations.

Further, it is apparent that similar conflicts between indigenous rights and the perception of dominant society of the need to preserve and protect natural values of areas claimed by indigenous peoples, also underlie these studies. In both the Canadian and Australian examples the bias toward public ownership or management as a means to resolve this conflict is seen.

However, the compromise embodied in the Uluru settlement appears to have been successful in promoting the self-determination of Aboriginal people. It is too early to assess the benefits of the Canadian approach, as the national parks in Nunavut have not yet been fully realised.

The value of these case studies lies in the implication that acceptable solutions have been developed in the face of similar conflicts to those faced in the New Zealand context. Features of these models may provide insights for the process of claim settlement in New Zealand. Joint management committees, allowing indigenous peoples the right to hunt within national parks and the use of indigenous knowledge in park management are features of both international examples. It may be possible to incorporate similar arrangements into New Zealand claim settlements, within an acceptable ownership framework, arrived at through negotiation between iwi and the Crown. However, whether certain aspects of the agreements studied here would be appropriate in the New Zealand situation, allowing for rangatiratanga while taking into account the concerns of the conservation and recreation lobbies, may be a matter for further study. The Uluru settlement would probably not be considered to be adequate compensation in the New Zealand context due to the implications of an enforced leaseback clause for rangatiratanga. An enforced leaseback arrangement implies that the indigenous group receiving ownership does not have the ability to decide how the area should be used or managed. As rangatiratanga involves both control as well as ownership, such an arrangement would be likely to be seen as unsatisfactory.

Neither does the national park settlement in the Nunavut agreement allow for full control or ownership of park areas, as such areas remain in Crown ownership, under a joint management regime. However, the implications of the Nunavut agreement are much wider, in that an autonomous Inuit state has in effect been created. Through this agreement the Inuit of Nunavut are able to govern their own affairs and train their own people for positions of responsibility, including in the areas of national park policy and management. In fact, government presence on joint management committees may be seen as much as an interim measure until Inuit are able to take over management entirely, than as a way for government to keep control of national park management (Couch, 1994:pers. comm.).

The international examples studied both involved areas of land which were seen to be important in terms of conservation, recreation and symbolic values. By contrast Tutae Patu Lagoon, while being highly valued by Ngai Tahu, does not have these same values. Nevertheless, this case study serves to demonstrate that iwi and DOC³³ are able to agree upon pragmatic solutions which may in fact be seen as favourable by all interests involved. Public access, conservation (or restoration) as well as cultural values are catered for under the agreement.

Public access to the jointly managed area surrounding Tutae Patu Lagoon is guaranteed, while Ngai Tahu may control access to the Lagoon. Given that shooting and eel fishing is currently not allowed at the Lagoon (DOC, unpub.:2), recreational opportunities will change little for the general public, while Ngai Tahu may eventually be able to use resources from the area once it has been restored. The Tutae Patu settlement has been much less contentious than settlements over areas with a higher profile amongst conservation and recreation groups and the general public. A current example is the continuing controversy over the Takapourewa (Stephen's Island) settlement (see Stone, 1994:27-30). In this case, although the island was wrongly taken from the Ngati Koata, it has become a sanctuary for a number of rare plants and wildlife, including the tuatara (RF&BPS, 1993:1). Negotiations between DOC and Ngati Koata with regard to revesting the island in iwi ownership have been met with opposition from the RF&BPS and FMC.

An important aspect of the less contentious Tutae Patu settlement is the attempt it makes to allow Ngai Tahu rangatiratanga over the area of greatest importance to the iwi. In gaining freehold title to Tutae Patu Lagoon the iwi has the same rights and responsibilities as other landowners. In this case the iwi has chosen to use their rights of rangatiratanga in order to pursue conservation and restoration objectives. Thus although the area is not in public ownership the eventual outcomes of the settlement would presumably be supported by the conservation and recreation lobby, as well as the general public. When considered in terms of a more controversial settlement like Takapourewa, it may be assumed that iwi intentions and exercise of rangatiratanga need not necessarily be antithetical to conservation aims. Much of the

³³ It must be noted that the Tutae Patu Lagoon model was originally suggested by the Waimakariri District Council rather than by DOC (Tau, 1994:pers. comm.).

opposition to this settlement rests on the suspicion that Ngati Koata may wish to perform cultural harvest of species, or carry out tourism development. Conservation and recreation groups see these activities as intrinsically perilous for the wildlife on the island (RF&BPS, 1993:1).

This opposition raises the importance of the process through which settlement outcomes are achieved. An important aspect which the settlement process must address is the need for the public to be given the opportunity to understand the historical and contemporary issues which have led to Maori grievance and calls for compensation. Through such a process the public may have a greater awareness of the reasons for Maori claims over conservation lands. This in turn may provide a better basis for the negotiation process.

A key factor which is likely to remain contentious in any claim settlement process however, is that of uncertainty. The uncertain nature of what Maori plan to do with conservation land received through claim settlement is behind a great deal of public opposition on this issue. Maori calls to have their rangatiratanga recognised through such settlements, involve the need for Maori to regain the control to decide how the land in question will be managed without conditions being imposed on the settlement. For lands with high conservation values it appears that the public would expect clear guarantees that the land be managed in such a way that those conservation values were maintained. Thus, there is a need for compromise from one or both parties to the debate, in order that politically viable settlements be reached.

With respect to this issue it may be possible for those with an interest in the debate to negotiate an agreement as to which types of land managed by DOC are suitable for transfer to Maori title, without the imposition of conditions with respect to the maintenance of conservation values. Areas with low conservation and recreation values, such as Tutae Patu Lagoon, and areas which were wrongly taken from Maori control may then be identified and offered as components in future settlements. A corollary to this process would be the identification of areas which are not suitable for alternative management regimes due to their importance in terms of conservation.

Another important factor in the claim settlement is the need to recognise the issue of intertribal equity. Government may be negotiating valuable settlements with iwi with the highest political profile or negotiating expertise, at the expense of other smaller or lesser known iwi. Further, high value settlements for iwi with small population numbers, as is the case with any settlement

of the Ngai Tahu claim, may create inequalities between iwi and individual Maori. In my opinion however, these issues must be resolved within the Maori world rather than by the imposition of political solutions, which may lead to further injustice.

SUMMARY

International agreements regarding land claim settlements over lands with high conservation values provide examples of negotiated outcomes which may be applied to some extent in the settlement of claims in New Zealand. However, due to unique features of the New Zealand context in which settlements are situated, importantly the Article II Treaty guarantee of rangatiratanga, aspects of these international settlements may not be acceptable. There is a need to search for outcomes which give iwi the control and ownership rights entailed by rangatiratanga, however in many cases these settlements may not be supported or accepted by public opinion, led mainly by the conservation and recreation lobby.

Examining the recent settlement within New Zealand, over Tutae Patu Lagoon, it is noted that this case may lead to outcomes which would be supported by both parties in the debate. It is this type of experience which may allow Maori and the conservation and recreation lobby to reconcile their differences and decide which areas of conservation land would benefit from Maori ownership and management, and which need the tighter controls provided by Crown management regimes.

CHAPTER SIX

CONCLUSION

This study examines the debate surrounding Treaty claims over conservation lands, beginning from the perspective that the Crown must provide redress for Maori grievances, in line with the sentiment and principles of the Treaty of Waitangi. Redress is necessary as compensation for the denial of rangatiratanga as guaranteed by Article II of the Treaty, and to allow for the reinstatement of Maori exercise of rangatiratanga. Land is identified in this study as an important component of any settlement, due to its cultural, as well as economic, importance to Maori today.

The provision of redress involving land runs into the difficulty that only Crown land may be claimed by iwi through the claim process. However, much remaining Crown land is the subject of multiple values, and as such is not seen by the public as freely available for the settlement of claims. Although Treaty claims are constrained to lands in Crown ownership, it may be seen that more people identify with these lands than private lands, which are generally of greatest importance to individual owners. The popular perception is that Crown lands are owned by, and for, the public.

This perception is at its strongest with regard to land managed for the protection of conservation values by the Department of Conservation. The majority of remaining Crown land is managed for the protection of such values. These lands are not only important to Maori, but have cultural significance to many Pakeha, who value the undeveloped and public good nature of such areas. These areas may be seen as important as much for their intrinsic values, as for the uses to which people put them.

The debate over the settlement of many Treaty claims then, revolves around a limited set of lands and involves conflict between Maori and Pakeha values over how these lands should be used. On one hand these lands may be 'used' for the preservation of natural values. Alternatively, under Maori control, they may be used as Maori may choose when exercising their rangatiratanga. Many in the conservation lobby fear that Maori control of areas of importance for conservation, may entail development or resource use activities which are not seen as appropriate within the framework of dominant approaches to environmental protection. Dominant

approaches tend to divide lands between privately owned areas where people may carry out activities with little regard for conservation, and public lands where nature is protected by the state and the perceived harmful influence of humans is minimised. Many opposing the settlement of Treaty claims over conservation lands assume that Maori ownership or control would have the same effect as the sale of conservation lands to private owners, who could then carry out exploitative activities on those lands.

The need for compromise between the two parties to this debate, in order that claims over conservation land be settled, is noted in this study. It is proposed that the building of such a compromise may be aided by an examination of claims settled between governments and indigenous people, over lands with conservation value, both inside and outside New Zealand. Two international examples and one New Zealand case are presented in this study. It was found that the two overseas cases could not be directly adopted in New Zealand for a number of reasons. However, these cases provide an illustration of outcomes negotiated in other countries, between indigenous people and governments, which may present possible models on which to base claim settlement negotiations in New Zealand.

In the New Zealand context, the Tutae Patu Lagoon case demonstrates that a satisfactory settlement may be reached over land managed by the Department of Conservation, albeit in this case, over land which is not thought to have high value for conservation. It is concluded in this study that such a settlement may have an educative function. This settlement may serve to demonstrate to the opposition in the debate that iwi ownership or management of certain conservation lands may actually provide benefits to both parties. In the Tutae Patu Lagoon case, the agreement entails the restoration of a degraded ecosystem by Ngai Tahu, the iwi receiving ownership. This agreement has positive implications for Ngai Tahu rangatiratanga, as well as for the conservation values of the area.

It is recognised that these models for claim settlement will not be appropriate in every situation, nor for all iwi, given the diversity of iwi aspirations and concerns. There is a need for both parties in the debate to put forward suggestions as to how the settlement of claims may proceed in order that common and divergent issues be raised. The settlement of claims over conservation land should be negotiated on a case by case basis depending primarily on the strength of the claim and also on the values associated with the land in question. However, Maori may continue

to hold the position that proven claims to land wrongly taken from Maori control should not be overridden by conservation or recreation concerns, as a bottom line criteria for negotiation. Such a position would be likely to be politically unfeasible, given the strength of the conservation lobby, along with support from general public opinion. This raises the need for negotiation and compromise, perhaps with regard to some aspects of the settlement agreements presented in this study.

A concern arising with the need for compromise on the behalf of one or both of the parties to this debate, is that a forced compromise may lead to further grievances in the future. This study began with the assumption that Treaty claims could be settled in a final manner, to some extent resolving the tensions between Maori and Pakeha. However, settlements including conservation land would, of necessity, involve compromise which may leave both sides of the debate dissatisfied. For instance, areas of high conservation value, which are thought to be best managed by DOC may not be suitable as part of claim settlements if the aim of government was to limit the exercise of rangatiratanga, to protect conservation values. If rangatiratanga was not limited over such areas, conservation aims may not be fulfilled. Such agreements may have the potential not to resolve tensions between the two parties to the debate, but to increase conflict. It may be a better approach for parties to the negotiation to acknowledge the tensions which exist between Maori and Pakeha worldviews and attitudes toward the environment, and work toward resolving these through the negotiation and settlement process.

Although the cases presented in this study are outcome oriented, the importance of the process used to come to such settlements is identified. It is suggested that a process be set in place whereby public awareness of the need for settlement of claims through the use of conservation lands is increased. Further, it is concluded that the public, through the Crown side of the negotiation and settlement process, should have a greater input into providing information and opinion as to the natural values of lands under claim. A greater public understanding of and input into the process may enable politically feasible solutions to be arrived at.

An important aspect not covered due to the size and time constraints of this study, is that the provision of redress to Maori through the settlement of claims over conservation land is only one step on the way to a working partnership between Maori and Pakeha. At present the issue is that of redress. Maori involvement in the management of conservation lands is currently rather

limited. These lands are managed for a number of values at present, however these values are seen to originate largely from a Pakeha perspective. Hence, Maori see the need to regain control over some important areas in order that Maori values and concerns be expressed in the management of these lands. An alternative to the settlement of claims through the use of conservation lands is that of the provision by government of other viable economic resources, as a form of redress. In conjunction with a functional partnership with regard to lands of importance for conservation, this could provide fuller redress. In such a partnership, conservation lands would be managed for the whole range of values with which these areas are associated, both Maori and Pakeha. Looking to the future, partnership in the management of shared Maori and Pakeha heritage, landscape and resources will continue to be a challenge for resource management.

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